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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: C. Foth
Serial No.: 09/881,172
Filed: 06/14/2001
For: DISTRIBUTING DEVICE HAVING CONTINUOUSLY MOVING GUIDE
VANES

Group Art Unit 3671

Examiner: Arpad F. Kovacs

Atty. Ref. 08920-US

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Becky Hansen 12 July 2004
Becky Hansen Date

TRANSMITTAL - Appeal Brief

Mail Stop - Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is:

Appeal Brief, 7 pages (and 2 copies)
US Patent 5,569,081 (and 2 copies)

Please charge \$330.00 to Deposit Account 04-0525 under 37 CFR 1.17(c) for filing Applicant's Appeal Brief.

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A duplicate copy of this page is enclosed.

Respectfully,

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Examiner: Arpad F. Kovacs
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9 July 2004

APPLICANT'S APPEAL BRIEF

Mail Stop Appeal Brief - Patent

Commissioner for Patents

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Sir:

Real Party in Interest

The real party in interest is Deere & Co. to whom this application was assigned by applicant according to the assignment document recorded with the US Patent Office on 1/18/2002 at Reel 012504, Frame 0046.

Related Appeals and Interferences

There are no related appeals or interferences.

07/15/2004 HALI11 00000042 040525 09881172

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Status of Claims

Claims 1-16 are currently pending in the above-identified application. Claims 1-8 and 10-16 stand finally rejected by the examiner in the Office Action dated 2/12/2004. Claim 9 was objected to by the examiner as depending from a rejected base claim. A Notice of Appeal was filed on 5/12/2004 by Fax Transmission and receipt was confirmed by Auto-Reply Fax on the same date. A correct copy of the claims is found in the attached Appendix.

Status of Amendments

There are no outstanding amendments.

Summary of the Invention

The present application, as best seen in Figure 3 and with reference to Para. 25 and 27, discloses a distributing device 62 for a chopper arrangement 42 having at least one guide vane 64 for transversely scattering a chopped crop and a drive 78 operatively coupled to the guide vane 64 that continuously moves the guide vane back and forth. It is noted that the guide vanes 64 of the present invention are continuously moving back and forth in spite of the wind direction or any change in the wind direction. Para. 31 describes a further “mechanism to control the back and forth motion of the guide vanes in response to wind.”

Issue

The issue is:

1. Does the disclosure in US Patent 5,569,081 to Baumgarten et al teach that “a drive operatively coupled to the guide vane continuously moves the guide vane back and forth?”

Grouping of Claims

Rejected claims 1-8 and 9-16 stand and fall together.

Argument

Rejection

The currently pending claims include independent claims 1, 13 and 16 which all recite “continuously moves the guide vane back and forth.” The Examiner finally rejected pending claims 1-8 and 10-16 under 35 USC 102(b) as being anticipated by US Patent 5,569,081. The examiner’s position is that Baumgarten discloses “at least one guide vane (plates, ref. 32) and a drive (35 and/or 35A and/or 35B) ...operatively coupled to the guide vanes continuously move the vanes back and forth (as shown on Fig. 5 and/or Fig 2, refs 35A or 35B).”

Issue

This is a case of first impression.

US Patent 5,569,081 to Baumgarten discloses a harvester thresher having guide plates 32 adjustably arranged and a motor means 35A/B activating the guide plates to compensate for the wind influence. Thus, the guide plates of Baumgarten are moved to one position and remain in that position to compensate for the wind.

Applicant asserts that Baumgarten does not disclose a drive that **continuously moves** the guide vanes back and forth as called for in claims 1, 13 and 16 of the present invention. In contrast to the present invention, Baumgarten moves the guide plates to a selected position based on wind direction. The guide plates of Baumgarten then remain in that position until the wind direction changes or the harvester changes direction relative to the wind.

Applicant notes that although the guide plates 32 of Baumgarten are “adjustable” or “movable” as shown by the arrows in Figures 2 and 3, there is no description in Baumgarten that the guide plates are “continuously moving.” The arrows in Figure 3 merely show that the guide plates are “movable”, which is not the same as “continuously moving.” Applicant further notes that the word “continuous” is not used anywhere in the disclosure of Baumgarten.

Anticipation, under 35 USC 102, requires that a single prior art reference teach every aspect of the claimed invention either expressly or inherently. See Verdegaal Brothers Inc. v. Union Oil Company of California, 814 F.2d 628, 631, 2 USPQ 1051, 1053 (Fed. Cir. 1987). The disclosure of US Patent 5,569,081 does not teach or suggest guide vanes that move continuously back and forth. Therefore US Patent 5,569,081 does not anticipate claims 1-8 and 10-16 of the present invention.

Reversal of the rejection as anticipated by Baumgarten is respectfully requested.

Thus, it is believed that this application is in condition for allowance, and such allowance is respectfully requested.

Any fees or charges due under 37 CFR 1.17 or otherwise due as a result of filing of the present paper may be charged against Deposit Account 04-0525. A duplicate of this page is enclosed.

Respectfully,

A handwritten signature in black ink, appearing to read 'A. Trausch', written over a horizontal line.

Attorney for Applicants

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Appendix

1. A distributing device for a chopper arrangement having at least one guide vane for transversely scattering a chopped crop, a drive operatively coupled to the guide vane continuously moves the guide vane back and forth.
2. A distributing device as defined by claim 1 wherein the drive pivots the guide vane back and forth about a vertical axis.
3. A distributing device as defined by claim 2 wherein the chopper arrangement has several guide vanes that are arranged transversely alongside each other and are connected to the drive.
4. A distributing device as defined by claim 3 wherein the guide vanes are pivoted back and forth by an element which is rotated by the drive.
5. A distributing device as defined by claim 4 further comprising a connecting rod that extends between the guide vanes and a pin located in a hole in the element.
6. A distributing device as defined by claim 5 wherein the hole of the element is a radially extending elongated hole and the pin can be locked in the elongated hole in various radial positions.
7. A distributing device as defined by claim 6 wherein the guide vanes are connected to a strut which in turn is connected to the connecting rod, the guide vanes can be

locked to the strut so that the guide vanes can be repositioned.

8. A distributing device as defined by claim 7 wherein the guide vanes are connected over a connecting element with the strut, the distributing device is provided with a housing having a top wall with an upper surface, the guide vanes are in sliding contact with the upper surface of the top wall.

9. A distributing device as defined by claim 8 wherein each of the guide vanes is provided with a diffusor.

10. A distributing device as defined by claim 4 wherein the element is rotatively mounted to a mount forming a lever arm that can be selectively pivoted by a regulating motor.

11. A distributing device as defined by claim 10 wherein the regulating motor pivots the mount as a function of the wind direction.

12. A distributing device as defined by claim 10 wherein the regulating motor pivots the mount as a function of the inclination of the ground.

13. An agricultural combine comprising:

- a frame

- a threshing assembly for separating grain from straw;

- a separating assembly further separating grain from straw;

- a straw chopper connected to the frame downstream from the separating

assembly for receiving straw therefrom, the straw chopper chopping the straw into smaller pieces, the chopper having guide vanes for distributing the smaller pieces, the guide vanes being coupled to a drive that continuously moves the guide vanes transversely back and forth.

14. An agricultural combine as defined by claim 13 wherein the guide vanes are pivoted back and forth by an element that is rotated by the drive, the element is rotatively mounted to a mount forming a lever arm that can be selectively pivoted by a regulating motor, the regulating motor selectively pivots the mount as a function of the wind direction.

15. An agricultural combine as defined by claim 13 wherein the guide vanes are pivoted back and forth by an element that is rotated by the drive, the element is rotatively mounted to a mount forming a lever arm that can be selectively pivoted by a regulating motor, the regulating motor selectively pivots the mount as a function of the inclination of the ground.

16. A method of distributing processed crop material from a combine back to a field, the method comprising the following steps:

chopping the processed crop material received from a separating assembly on the combine with a straw chopper creating chopped crop material;

guiding and distributing the chopped crop material from the straw chopper with guide vanes; and

continuously moving the guide vanes transversely back and forth to evenly distribute the chopped crop material.